IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WP(C).No. 26299 of 2006(E)

PETITIONERS:

---

1. MALUKUTTY.C., W/O.RAMAKRISHNAN,
   NEELIPARAMIL HOUSE, MULLAMPARA,
   MANJERI, MALAPPURAM DISTRICT.

2. RUKHIYA.M.G., D/O.S.M.MUHAMMED (LATE),
   `ROSE' NEAR FOREST RANGE OFFICE,
   KARULAYI, NILAMBUR, MALAPPURAM DISTRICT.

3. RAJESWARI.T., PADIKKALKULAM,
   ARUKIZHAYA, MANJERI, MALAPPURAM DISTRICT.

4. P.T.MURALEEDHARAN,
   GEETHA LAKSHMI NILAYAM, P.O.KOLAPARAMBA,
   MALAPPURAM DISTRICT.

5. SUKUMARAN.A., S/O.KEERAN,
   AYINATTU HOUSE, KARAKUNNU P.O.,
   MALAPPURAM DISTRICT.

6. ASHOK KUMAR.M., S/O.RAMANKUTTY,
   MELEMELEVEETTIL HOUSE, THRIKALANGODE,
   MALAPPURAM DISTRICT.

7. ABDU CHERUKADU, S/O.HYDRU,
   CHERUKADU HOUSE, PATHAPIRIYAM P.O.,
   MALAPPURAM DISTRICT.

8. JANAKI KANAKKANCHERY,
   KADAMBODE P.O., PANTHALLUR,
   MALAPPURAM DISTRICT.

9. BABY.A., W/O.BHASKARAN,
   PRADEEKSHA HOUSE, NAMBEESAN COLONY,
   MALAPPURAM, MALAPPURAM DISTRICT.

10. LAKSHMI.A.P., ATTUPURATH VEEDU,
KUTTIPURAM P.O., MALAPPURAM DISTRICT.

11. SUNANDA.K., W/O.GANGADHARAN,
KURIYAD HOUSE, PURATHUR P.O.,
MALAPPURAM DISTRICT.

12. SIVARAMAN.A., S/O.NADI,
AKAYATH HOUSE, NARUKARA, MANJERI,
MALAPPURAM DISTRICT.

13. N.V.MUHAMMED ABDUL RAHMAN,
S/O.BAPPU (LATE), NALAKATH HOUSE,
MUNDUPARAMBA, MALAPPURAM DISTRICT.

14. CHANDRAN.P., S/O.CHANDUNNI,
MOOTHEDATH KUNNU, PATHAPIRIYAM P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:
---

1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF HEALTH, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR OF HEALTH SERVICES,
TRIVANDRUM.

3. THE DISTRICT MEDICAL OFFICER,
MANJERI, MALAPPURAM DISTRICT.

BY GOVT.PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO. 26299 of 2006

Dated this the 21st day of November, 2006

JUDGMENT

The petitioners were appointed as Hospital Attendants Grade II in the various Government Hospitals in Malappuram District on daily wages. It is not disputed that the appointment of Hospital Attendants Grade II shall be from the list of candidates sponsored by the Employment Exchange. That is what the recruitment rule says. But the petitioners were appointed contrary to the above rule. Apprehending termination of their services, this writ petition has been filed. It is submitted on behalf of the petitioners that the respondents had taken steps to fill up the vacant posts by appointing fresh hands on daily wage basis and therefore, a direction to the respondents to allow the petitioners to continue in service atleast until regular recruits join duty may be issued.

2. Learned counsel for the petitioner submits that since the filing of the writ petition, the services of the petitioners have been terminated.

3. I think, the petitioners have not made out a case for interference. The relief prayed for by the petitioners cannot be granted in the light of the authoritative pronouncement on the subject by the

constitutional bench decision of the apex court in **Secretary, State of Karnataka v Umadevi (2006(4) SCC 1).** In paragraph 43 of the above judgment, the apex Court inter alia has held as follows:

> ".....If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. .....In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

It will be useful to read through the following passages in paragraph 45 of the above judgment.

"..... It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. ..... In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. ..... The argument that since one has been working for some time in the post, it will not be just to discontinue him, eventhough he was aware of the nature o the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality

> and equality of opportunity enshrined in Article 14 of the Constitution."

4. The respondents have got a duty to fill up the vacancies in the sanctioned posts following the method of recruitment laid down in the relevant provisions of law. The practice of making temporary appointments so as to bypass the recruitment rules has been deprecated by the apex Court as actions done against the constitutional scheme. Hence this writ petition is disposed of holding that the petitioners do not have any right to continue in employment as Hospital Attendants Grade II. The respondents shall take appropriate steps to fill up the sanctioned posts following the method laid down in the relevant recruitment rules.

The writ petition is dismissed subject to the above observations.

K.K.DENESAN, JUDGE

css/